

HOUSE BILL 371
By Williams (Wil)

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 30, relative to anatomical gifts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-30-102, is amended by deleting the section in its entirety and by substituting instead the following:

Section 68-30-102. As used in this part, unless the context otherwise requires:

- (1) "Acute care general hospital" means any hospital which has an emergency room facility;
- (2) "Advisory committee" means the organ donation advisory committee established under Section 8;
- (3) "Bank or storage facility" a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof;
- (4) "Board" means the humanity registry;
- (5) "Decedent" means a deceased individual, including a stillborn infant or fetus;
- (6) "Donor" an individual who makes a gift of all or part of his body;
- (7) "Fund" means the organ donation awareness trust fund established under Section 7;
- (8) "Hospital" means an institution licensed in this state having an organized medical staff established for the purpose of providing to inpatients, by

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or under the supervision of physicians, diagnostic and therapeutic services for the care of persons who are injured, disabled, pregnant, diseased, sick or mentally ill or rehabilitation services for the rehabilitation of persons who are injured, disabled, pregnant, diseased, sick or mentally ill. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties. The term does not include facilities caring exclusively for the mentally ill;

(9) "Organ procurement organization" means an organization that meets the requirement of Section 371 of the public health service act (58 stat. 682, 42 U.S.C. Section 273);

(10) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body;

(11) "Person" means an individual, corporation, government or governmental subdivision or agency business trust, estate, trust, partnership, association or any other legal entity;

(12) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state; and

(13) "State" means the state of Tennessee.

SECTION 2. Tennessee Code Annotated, Section 68-30-103, is amended by deleting the section in its entirety and by substituting instead the following:

(a) Any individual of sound mind and eighteen (18) years of age or older may give all or any part of his body for any purpose specified in Section 3, the gift to take effect upon death. Any individual who is a minor and sixteen (16) years of age or older may effectuate a gift for any purpose specified in Section 3, provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other

document of gift. A gift of the whole body shall be invalid unless made in writing at least ten (10) days prior to the date of death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent body for any purpose specified in Section 3:

- (1) The spouse;
- (2) An adult son or daughter;
- (3) Either parent;
- (4) An adult brother or sister;
- (5) A guardian of the person of the decedent at the time of his death; and
- (6) Any other person authorized or under obligation to dispose of the body;

(c) If the donee has actual notice of the contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subdivision (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by this act.

SECTION 3. Tennessee Code Annotated, Section 68-30-104, is amended by deleting the section in its entirety and substituting instead the following:

Section 68-30-104. The following persons may become donees of gifts of bodies or parts thereof for any of the purposes stated:

(1) Any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy.

(3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.

(4) Any specified individual for therapy or transplantation needed by such individual.

(5) The board.

SECTION 4. Tennessee Code Annotated, Section 68-30-105, is amended by deleting subsections (a), (b), (c), (d), and (e) and by redesignating the subsequent subsection accordingly:

(a) A gift of all or part of the body under Section 2(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under Section 2(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two (2) witnesses who must sign the document in the donor's presence. If the donor is mentally competent to signify such donor's desire to sign the document but is physically unable to do so, the document may be signed for the donor by another at the donor's direction and in the donor's presence in the presence of two (2) witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon the following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding any other provision of law to the contrary, the donor may designate in such donor's will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, or, in the case of a gift of eyes, the donee or other person authorized to accept the gift may employ or authorize a person who is a funeral director licensed by the state board of funeral directors, an eye bank technician or medical student, if the person has successfully completed a course in eye enucleation, or an eye bank technician or medical student trained under a program in the sterile technique for eye enucleation approved by the state board of medical examiners to enucleate eyes for an eye bank for the gift after certification of death by a physician. A qualified funeral director, eye bank technician or medical student acting in accordance with the terms of this subsection shall not have any liability, civil or criminal, for the eye enucleation.

(e) If a donor card, donor driver's license, living will, durable power of attorney or other document of gift evidencing a gift of organs or tissue has been executed, consent of any person designated in Section 2(b) at the time of the donor's death or immediately thereafter is not necessary to render the gift valid and effective.

(f) Any gift by a person designated in Section 2(b) shall be made by a document signed by such person or made by such person's telegraphic, recorded telephonic or other recorded message.

SECTION 5. Tennessee Code Annotated, Title 68, Chapter 30, Part 1, is further amended by adding the following as a new section to be appropriately designated:

Section 68-30-1__.

(a) On or before the occurrence of each death in an acute care general hospital, the hospital shall make contact with the regional organ procurement organization in order to determine the suitability for organ, tissue and eye donation for any purpose specified under this act. This contact and the disposition shall be noted on the patient's medical record.

(b) If the hospital administrator or such administrator's designee has received actual notice of opposition from any of the persons named in Section 2(b) and the decedent was not in possession of a validly executed donor card, the gift of all or any part of the decedent's body shall not be requested.

(c) Notwithstanding any provision of law to the contrary, the intent of a decedent to participate in an organ donor program as evidenced by the possession of a validly executed donor card, donor driver's license, living will, durable power of attorney or other document of gift shall not be revoked by any member of any of the classes specified in Section 2(b).

(d) Each acute care general hospital shall develop within one (1) year of the effective date of this act, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. It shall require that, at or near the time of every individual death, all acute care general hospitals contact by telephone the appropriate regional organ procurement organization to determine suitability for organ, tissue and eye donation of the individual in

question. The person designated by the acute care general hospital to contact the organ procurement organization shall have the following information available prior to making the contact:

(1) The patient's identifier number.

(2) The patient's age.

(3) The cause of death.

(4) Any past medical history available. The organ procurement organization, in consultation with the patient's attending physician or such physician's designee, shall determine the suitability for donation. If the organ procurement organization in consultation with the patient's attending physician or such physician's designee determines that donation is not appropriate based on established medical criteria, this shall be noted by hospital personnel on the patient's record, and no further action shall be necessary. If the organ procurement organization in consultation with the patient's attending physician or such physician's designee determines that the patient is a suitable candidate for anatomical donation, the acute care general hospital shall initiate a request by informing the persons and following the procedure designated under Section 2(b) of the option to donate organs, tissues or eyes. The person initiating the request shall be an organ procurement organization representative or a designated requester. The organ procurement organization representative or designated requester shall ask persons pursuant to Section 2(b) whether the deceased was an organ donor. If the person designated under Section 2(b) does not know; then this person shall be informed of the option to donate organs and tissues. The protocol shall encourage discretion and sensitivity to family circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into

account the deceased individual's religious beliefs or nonsuitability for organ and tissue donation.

(e)(1) The first priority use for all tissue shall be transplantation.

(2) Upon department of health approval of guidelines pursuant to subsection (f)(1)(B), all acute care general hospitals shall select at least one (1) tissue procurement provider. A hospital shall notify the regional organ procurement organization of its choice of tissue procurement providers. If a hospital chooses more than one (1) tissue procurement provider it may specify a rotation of referrals by the organ procurement organization to the designated tissue procurement providers.

(3) Until the department of health has approved guidelines pursuant to subsection (f)(1)(II), tissue referrals at each hospital shall be rotated in a proportion equal to the average rate of donors recovered among the tissue procurement providers at that hospital during the two (2) year period ending January 1, 1999.

(4) The regional organ procurement organization, with the assistance of tissue procurement providers, shall submit an annual report to the general assembly on the following:

(A) The number of tissue donors.

(B) The number of tissue procurements for transplantation.

(C) The number of tissue procurements recovered for research by each tissue procurement provider operating in this commonwealth.

(f)(1) The department of health, in consultation with organ procurement organizations, tissue procurement providers and the Tennessee Hospital Association, donor recipients and family appointed pursuant to this act shall, within six (6) months of the effective date of this act; do all of the following:

(A) Establish guidelines regarding efficient procedures facilitating the delivery of anatomical gift donations from receiving hospitals to procurement providers.

(B) Develop guidelines to assist hospitals in the selection and designation of tissue procurement providers.

(2) Each organ procurement organization and each tissue procurement provider operating within this state shall, within six (6) months of the effective date of this act; file with the department of health, for public review, its operating protocols.

(g)(1) The department of health shall make annual death record reviews at acute care general hospitals to determine compliance with subsection (d).

(2) To conduct a review of an acute care general hospital, the following apply:

(A) The department of health shall select, to carry out the review; the licensed organ procurement organization designated by the health care financing administration for the region within which the acute care general hospital is located. For an organ procurement organization to be selected under this subparagraph, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(B) If there is no valid selection under subdivision (A) or if the organization selected under subdivision (A) is unwilling to carry out the review, the department shall select, to carry out the review, any other state licensed organ procurement organization. For an organ procurement organization to be selected under this subdivision, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(C) If there is no valid selection under subdivision (B) or if the organization selected under subdivision (B) is unwilling to carry out the review; the department shall carry out the review using trained department personnel.

(3) There shall be no cost assessed against a hospital for a review under this subsection.

(4) If the department finds, on the basis of a review under this subsection, that a hospital is not in compliance with subsection (d), the department may impose an administrative fine of up to five hundred dollars (\$500.00) for each instance of noncompliance. Fines collected under this subdivision shall be deposited into the fund.

(h) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Designated requester" means a hospital employee completing a course offered by an organ procurement organization on how to approach potential donor families and request organ or tissue donation.

(2) "Noncompliance" means any failure on the part of a hospital to contact an organ procurement organization as required under subsection (d).

SECTION 6. Tennessee Code Annotated, Title 68, Chapter 30, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section 68-30-1____. Police and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to insure that the driver's license or personal identification card, donor card or other document of gift and medical alert bracelet, if any, of the individual involved in the accident or trauma accompanies the individual to the hospital or other health care facility. The hospital or other health care facility shall, within five (5) days, if practicable, return the driver's license or identification card to the department of safety, if the individual involved in the accident is deceased.

SECTION 7. Tennessee Code Annotated, Title 68, Chapter 30, Part 1, is further amended by adding the following as a new section to be appropriately designated:

Section 68-30-1____.

(a) There is created the Organ Donation Awareness Trust Fund.

(b) The purpose of such fund shall be to promote organ donation awareness and to educate Tennesseans that organ donation is an important part of medical health education.

(c) No later than July 1, 1997, the department of safety shall provide an applicant for an original or renewal driver's license or identification card the opportunity to make a contribution of one dollar (\$1.00) to the Organ Donation Awareness Trust Fund. The contribution shall be added to the regular fee assessed for an original or renewal driver's license or identification card. One (1) contribution may be made for each issuance or renewal of a license or identification card. The contributions shall be used exclusively for the purposes set out in Section 8. The department of safety shall monthly determine the total amount designated under this section and shall report such amount to the department of finance and administration who shall transfer such amount to the fund.

SECTION 8. Tennessee Code Annotated, Title 68, Chapter 30, Part 1, is further amended by adding the following as a new section to be appropriately designated:

Section 68-30-1____.

(a) All contributions received by the department of safety under Section 7, shall be deposited into a special fund in the department of finance and administration to be known as the organ donation awareness trust fund.

(b) All moneys deposited in the fund and interest which accrues from those funds are appropriated on a continuing basis to compensate the department of safety and the department of health for actual costs related to implementation of this act, including all costs of the organ donation advisory committee created in subsection (c). Any remaining funds are appropriated for the following purposes:

(1) Ten (10) percent of the total fund may be expended annually by the department of health for reasonable hospital and other medical expenses, funeral expenses and incidental expenses incurred by the donor or donor's family in connection with making a vital organ donation. Such expenditures shall not exceed three thousand dollars (\$3,000) per donor and shall only be made directly to the funeral home, hospital or other service provider related to the donation. No part of the fund shall be transferred directly to the donor's family, next of kin or estate. The advisory committee shall develop procedures, including the development of a pilot program, necessary for effectuating the purposes of this paragraph.

(2) Fifty percent (50%) may be expended for grants to certified organ procurement organizations for the development and implementation of organ donation awareness programs in this commonwealth. The department of health shall develop and administer this grant program, which is hereby established.

(3) Fifteen percent (15%) may be expended by the department of health, in cooperation with certified organ procurement organizations, for the project-make-a-choice program, which shall include information pamphlets designed by the department of health relating to organ donor awareness and the laws regarding organ donation, public information and public education about contributing to the fund when obtaining or renewing a driver's license.

(4) Twenty-five percent (25%) may be expended by the department of education for the implementation of organ donation awareness programs in the secondary schools in this state.

(c) The organ donation advisory committee is hereby established, with membership as follows:

(1) Two (2) representatives of organ procurement organizations.

(2) Two (2) representatives of tissue procurement providers.

(3) Six (6) members representative of organ, tissue and eye recipients, families of recipients and families of donors.

(4) Three (3) representatives of acute care hospitals.

(5) One (1) representative of the department of health.

(6) One (1) representative of eye banks. All members shall be appointed by the governor. Appointment shall be made in a manner that provides representation of three grand divisions of the state. Members shall serve three (3) year terms. The governor may reappoint advisory committee members for successive terms. Members of the advisory committee shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term the governor shall appoint another member in accordance with this subsection to fill the unexpired term. The advisory committee shall meet at least biannually to review progress in the area of organ and tissue donation in this state, recommend education and awareness training programs, recommend priorities in expenditures from the fund and advise the commissioner of health on matters relating to administration of the fund. The advisory committee shall recommend legislation as it deems necessary to fulfill the purposes of this act. The advisory committee shall submit a report concerning its activities and progress to the general assembly within thirty (30) days prior to the expiration of each legislative session. The department of health shall reimburse members of the advisory committee for all necessary and reasonable travel and other expenses incurred in the performance of their duties under this section.

(d) Reports. The department of health and the department of education shall submit an annual report to the general assembly on expenditures of fund moneys and any progress made in reducing the number of potential donors who were not identified.

(e) Definition. As used in this section, the term "vital organ" means a heart, lung, liver kidney, pancreas, small bowel, large bowel or stomach for the purpose of transplantation.

SECTION 9. Tennessee Code Annotated, Title 68, Chapter 30, Part 1, is further amended by adding the following as a new section to be appropriately designated:

Section 68-30-1 ____.

(a) No organ procurement organization selected to conduct annual death reviews may use that review authority or any powers or privileges granted thereby to coerce or attempt to coerce a hospital to select the organization or any tissue procurement provider contractually affiliated with the organization as a designated tissue procurement provider.

(b) No organ procurement organization or tissue procurement provider may disparage the services or business of other procurement providers by false or misleading representations of fact, engage in any other fraudulent conduct to influence the selection by a hospital of a qualified tissue procurement provider nor engage in unlawful competition or discrimination. This subsection is not intended to restrict or preclude any organ procurement organization or tissue procurement provider from marketing or promoting its services in the normal course of business.

SECTION 10. A person who acts in good faith in accordance with the provisions of this act shall not be subject to criminal or civil liability arising from any action taken under this act. The immunity provided by this section shall not extend to persons if damages result from the gross negligence, recklessness or intentional misconduct of the person.

SECTION 11. Upon availability of funding for such purposes, the department of education, in cooperation with the department of health and organ procurement organizations, shall establish a program that can be used for secondary education purposes, which shall include:

(a) Information about state law relating to anatomical gifts, including how to become an organ donor.

(b) General information about organ transplantation in the United States.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.